

DR 94-252

PUBLIC SERVICE OF NEW HAMPSHIRE

First Amended Contract No. NHPUC-98 between
Public Service Company of New Hampshire and Freudenberg-NOK

Order Nisi Approving Amended Special Contract No. NHPUC-98

O R D E R N O. 23,546

September 5, 2000

On April 10, 2000, Public Service Company of New Hampshire (PSNH) submitted to the New Hampshire Public Utilities Commission (Commission) both a redacted and un-redacted First Amended Contract No. NHPUC-98 between PSNH and Freudenberg-NOK General Partnership (Freudenberg). The original Special Contract, No. NHPUC-98, was approved by Order No. 21,484 on January 4, 1995. The original contract provided reduced rates for load (associated with new molding equipment) in excess of a Base Demand as an incentive for production expansion in Bristol, NH rather than one of Freudenberg's other Seals Division plants outside of NH. The Amended Contract requests that the special contract pricing be extended to Freudenberg's new Laconia and Franklin factories. Specifically, the agreement modifies the Base Demand to include all three facilities. Outside of this change to Base Demand, all other terms and conditions of Contract No. NHPUC-98 remain in effect.

According to the petitioner, growth at the Bristol facility required Freudenberg to increase its production capacity. The Bristol facility could no longer accommodate the molding process so Freudenberg built the Franklin and Laconia factories, moved the molding operations into these facilities, and ceased its molding process at Bristol. PSNH argues that had the Bristol facility been able to accommodate the unanticipated expansion, the special pricing would have been available to Freudenberg under the original special contract. PSNH also states that absent the original special contract these two new facilities would not have been built in New Hampshire.

On May 11, 2000, Staff sent data requests to PSNH which were answered on May 31, 2000. Most of the data responses were filed confidentially subject to the Protective Order dated December 13, 1994, Order No. 21,460. Staff met with representatives of Freudenberg and PSNH at Freudenberg's Laconia factory on July 17, 2000. Following review of the confidential materials, Staff sent its recommendation to the Commission. On August 21, 2000, the Commission received a letter from Freudenberg-NOK indicating that it would create 70 new jobs in its Laconia facility if the contract was approved.

We have reviewed PSNH's petition and our Staff's recommendation, and find the First Amended Special Contract No. NHPUC-98 to continue to be in the public interest. The amended contract is designed to preserve full tariff revenues up to the original Base Demand levels regardless of how the load is shifted among the three facilities. Except for aggregation of the three facilities' load for purposes of calculating Base Demand, all other terms and conditions remain the same as in our previous approval, Order No. 21,484. We stress it is our view that the same processes given discounting under the original special contract will continue to receive discounting here. We are assured by PSNH's calculations and the representations of Freudenberg that the discount under the amended special contract will not increase significantly, if at all, from the discount under the original special contract prior to production starting at the two focus factories.

We have acknowledged before that a contract can be modified by the mutual agreement by parties. *Re Northern Utilities Inc., Allied Gas Division*, 62 NH PUC 76 (1977); see also *Trombly v. Blue Cross/Blue Shield of New Hampshire*, 120 NH 764, 766 (1980). Here, the parties modified certain terms of the existing special contract. The result is consistent

with the original intent of the parties and with our approval of the underlying contract. In our review, we believe special circumstances endure which justify the continuation of the special contract as modified.

Moreover, as in our original approval, we are persuaded by the economic development aspects of this special contract as amended. According to Freudenberg, the amended special contract will continue to act as an incentive to increase production and manufacturing jobs in New Hampshire rather than other Seals Division locations. In order to monitor whether this occurs in fact, we direct PSNH to file a report with the Commission in January of 2001, and thereafter on an annual basis, of the change in load, usage and employment at Freudenberg's Bristol, Laconia and Franklin factories and an explanation for any significant changes.

Insofar as the issue of confidentiality is concerned, we have reviewed the redacted version of PSNH's petition and find that it conforms with the redacted version of the original Special Contract No. NHPUC-98 which was filed with the Commission on October 27, 1994, and granted confidentiality under Order No. 21,460 on December 13, 1994. Therefore, we will extend our protection order to the newly filed material. The data responses to Staff's requests

primarily update and expand on information in the unredacted technical statement filed on December 14, 1994 which was also granted confidentiality under Commission Order No. 21,460. The only data response we find to not fall under the December 13, 1994 Protective Order, Order No. 21,460 is Data Request NSTF-01, Q-Staff-007 which asks "What product is manufactured at the Franklin and Laconia facilities? Does this differ from the Bristol facility?". We ask PSNH to either file a protective motion for the information in this data response or to file a letter indicating that the information is not considered confidential. If such a filing is not received within 2 weeks of the issuance date of this order, we will consider the data response to NSTF-01, Q-Staff-007 non-confidential and place the data response in our public files.

Based upon the foregoing, it is hereby

ORDERED NISI, that First Amended Contract No. NHPUC-98 between Public Service Company of New Hampshire and Freudenberg-NOK Limited Partnership, Seals Division, is approved; and it is

FURTHER ORDERED, that the Petitioner shall cause a copy of this Order Nisi to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such

publication to be no later than September 12, 2000 and to be documented by affidavit filed with this office on or before September 19, 2000; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than September 29, 2000; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than October 5, 2000; and it is

FURTHER ORDERED, that this Order Nisi shall be effective October 9, 2000, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fifth day of September, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Attested by:

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Thomas B. Getz
Executive Director and Secretary

Dissenting Opinion of Commissioner Brockway

Based on the current record, I cannot join my colleagues in approving this proposed special contract. While it is a close question, I see this as a new contract for service at two new locations, rather than as an extension of the existing contract approved in Order No. 21,484. I do not believe, on the basis of the record in its present state, that it meets the standards that would justify a new special contract.

We should hesitate to extend existing special contracts to new circumstances, and we should put applicants for new special contracts to a high standard. Here, there is evidence that the lower rates associated with the special contract were not determinative in the customer's move from the Bristol location. The customer moved quickly to build the Franklin and Laconia facilities starting last summer, finding demand for its product so intense that it had to find larger and more flexible space than available in Bristol, the location of the original special contract. Unlike the situation facing the customer in 1995, today there is a high likelihood of a general rate decrease for all customers, making the additional discount from a special contract less dispositive in location and expansion decisions. Given the

history of job development subsidies nationally (such as tax relief), the representation that more jobs will be located in New Hampshire if the contract is approved should be subjected to rigorous scrutiny before being accepted as the basis for a major rate subsidy. Also, I would insist on much more detailed support than the representation of either the utility or the customer for the proposition that self-generation is a real threat to load retention over the time period of the contract.

I am concerned about approving any special contract, the trigger factor of which is higher peak demand, given the current issues in ISO-NE with market power and high prices at peak demand times. This concern is mitigated somewhat here by the fact that the proposal is to allow the customer to count demand at its three separate New Hampshire facilities towards the minimum Base Demand, resulting in a lower pressure on peak demand than if the contract provided for a minimum demand at each of the three facilities, but that fact in turn highlights the cost-shifting aspects of the special pricing represented by the contract.

The interplay of RSA 378:18-a and Chapter 374 result in a probability that other customers would be required to pick up the approximately \$200,000 annual difference in stranded costs

represented by this proposed special contract. I cannot concur that the present record justifies such a cost shift, nor that we are bound by our decision in Order No. 21,484.

Nancy Brockway
Commissioner

September 5, 2000